

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PAUL F. ELY

Plaintiff,

v.

UNITED STATES POSTAL SERVICE

Defendant.

3:10-cv-0550-LRH-RAM

ORDER

Before the court is defendant the United States Postal Service's ("USPS") motion to dismiss filed on November 4, 2010. Doc. #7.<sup>1</sup> Plaintiff Paul F. Ely ("Ely") did not file an opposition.

Ely allegedly sent a package containing roughly \$3000.00 in gold through defendant USPS. Ely purchased insurance for the package which was lost in transit. Ely demanded the value of the missing package per the insurance agreement and USPS refused. Ely subsequently filed a complaint against defendant USPS for breach of contract. Thereafter, defendant USPS filed the present motion to dismiss. Doc. #7.

While the failure of an opposing party to file points and authorities in response to any motion shall constitute a consent to the granting of the motion under LR 7-2(d), Ely's failure to file

<sup>1</sup> Refers to the court's docketing number.

1 an opposition, in and of itself, is an insufficient ground for dismissal. *See Ghazali v. Moran*, 46  
2 F.3d 52, 53 (9th Cir. 1995). Before dismissing a case, a district court is required to weigh several  
3 factors: (1) the public's interest in the expeditious resolution of litigation; (2) the court's need to  
4 manage its docket; (3) the risk of prejudice to the defendant; 4) the public policy favoring  
5 disposition of cases on their merits; and (5) the availability of less dramatic sanctions. *Id.*

6 Here, these factors weigh in favor of dismissal. The need for the expeditious resolution of  
7 cases on the court's docket is strong. Defendants have an interest in resolving this matter in a  
8 timely manner. Further, there is a lack of prejudice to the plaintiff because Ely has shown an  
9 unwillingness to continue litigating his complaint which weighs in favor of granting the motion.  
10 Additionally, although public policy favors a resolution on the merits, the court finds that dismissal  
11 is warranted in light of these other considerations.

12  
13 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #7) is  
14 GRANTED. The complaint is dismissed without prejudice.

15 IT IS SO ORDERED.

16 DATED this 14th day of December, 2010.



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18  
19 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE